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LEMBAGA TATATERTIB PEGUAM-PEGUAM

v.

WAN MOHD NAZRI WAN HASSAN

B

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
HASHIM YUSOFF JCA
ZULKEFLI MAKINUDIN JCA
[CIVIL APPEAL NO: W-02-1199-2005]

C

27 JULY 2006

LEGAL PROFESSION: *Professional discipline - Procedure - Whether Disciplinary Board wrongly appointed a Disciplinary Committee to hear a complaint against plaintiff without first appointing and obtaining a*

D

report from an Investigating Tribunal - Whether statutory procedure laid down in Legal Profession Act 1976 must be followed and not unilaterally circumvented - Legal Profession Act 1976, ss. 100, 102(2), 103A, 103B

STATUTORY INTERPRETATION: *Construction of statutes -*

E

Statute must be looked at as a whole - Whether ss. 103A and 103B ought to be considered together with preceding sections under Part VII Legal Profession Act 1976 - Whether statutory procedure laid down in Legal Profession Act 1976 must be followed and not unilaterally circumvented

F

STATUTORY INTERPRETATION: *Aids to construction - Amending Bill - Legal Profession (Amendment) Bill 1992 - Interpretation of ss. 103A and 103B Legal Profession Act 1976 - Legal Profession Act 1976, s. 103A(a)*

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The plaintiff, an advocate and solicitor, sought the following declarations and relief against the defendant, a Disciplinary Board ('DB') constituted under s. 93 of the Legal Profession Act 1976 ('Act'): (i) a declaration that the defendant had wrongly appointed a Disciplinary Committee ('DC') to hear a complaint against the

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plaintiff without first appointing an Investigating Tribunal ('IT') and obtaining a report from the IT; (ii) a declaration that the disciplinary proceedings carried out by the DC were in breach of the provisions of the Act; (iii) a declaration that the disciplinary proceedings taken thus far against the plaintiff by the DC were

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null and void; and (iv) an injunction to stop all further disciplinary proceedings against the plaintiff by the DC. The learned High Court Judge allowed the plaintiff's application resulting in the

present appeal by the defendant. The defendant, referring to s. 103A(a) read together with s. 103B of the Act, submitted that it might, in certain circumstances, appoint a DC without the need of going through the mechanism of appointing an IT. The defendant also contended that a reading of the explanatory statement to s. 103A of the Legal Profession (Amendment) Bill 1992 ('Bill') shows that s. 103A is to be read together with s. 103B of the Act, and that these two sections need not be considered together with the preceding sections under Part VII of the Act in arriving at the proper interpretation of the said two sections. The sole issue requiring determination in this appeal was whether the defendant could proceed with a complaint made against the plaintiff, by appointing a DC without first appointing an IT to inquire into the complaint and to submit a report, pursuant to the provisions of the Act.

Held (dismissing the appeal)
Per Zulkefli Makinudin JCA:

(1) The provisions of ss. 103A and 103B in Part VII of the Act must be considered in the light of the preceding sections under the same Part VII of the Act relating to "Disciplinary Proceedings". It cannot be considered in isolation to circumvent the procedure and mechanism provided by the Act in dealing with complaints against advocates and solicitors. To do so would lead to arbitrariness which would be contrary to the spirit of the Act. Whether there should be a formal investigation or not as envisaged by s. 103A(a) of the Act, it must be subject to a report made by the IT under s. 102(2) of the Act. The relevant words used in s. 100 of the Act are that the DB "shall forthwith" constitute an IT if the DB considers a complaint has merit. There is nothing in s. 100 of the Act to even suggest that the DB can "forthwith" appoint a DC to investigate a complaint in certain circumstances as contended by the defendant. If the legislature intended the DB to have the powers to "forthwith" appoint a DC and bypass the appointment of an IT, then there would have been an express provision to this effect; however, there is no such provision. The construction that the defendant was propounding required the court to insert words into the Act for it to apply, which would clearly go against all principles of statutory interpretation. (paras 10, 14 & 15)

(2) With regard to the defendant's contention that the explanatory statement of the Bill be referred to as an aid to the statutory interpretation of ss. 103A and 103B of the Act, it did not necessarily show that it gave the defendant a separate jurisdiction to appoint a DC without appointing an IT in certain circumstances as set out in s. 103A(a) of the Act. Equally, it could also be interpreted to mean that in the circumstances as set out in s. 103A(a) of the Act, the provisions in respect of the appointment and function of an IT mentioned in the earlier preceding ss. 100 and 102 of the Act would have to be considered in its application. (para 16)

(3) The learned trial judge was correct when he stated that by the defendant herein bypassing the IT and appointing a DC, the defendant had unilaterally removed one of the tiers provided for by Parliament in the Act for investigating a complaint. The defendant could not unilaterally do this and ignore the clear and express provisions of the Act. The learned trial judge had also rightly stated that looking at the scheme of the Act, the only time when the DB may constitute a DC without consulting an IT is when an advocate and solicitor has been convicted of an offence of criminal breach of trust or any other offence involving fraud or dishonesty, or when the advocate and solicitor has been suspended under s. 94(4) of the Act. In the present case, the plaintiff had neither been convicted of any criminal case nor had he been suspended. Hence, it was incumbent upon the defendant to follow the procedures as laid down by the Act and not to unilaterally circumvent the statutory procedure provided for in the Act. (paras 17 & 18)

Bahasa Malaysia *translation of headnotes*

Plaintif, seorang peguamcara dan peguambela, telah memohon beberapa deklarasi terhadap defendan, Lembaga Disiplin ('DB') yang ditubuhkan di bawah s. 93 Akta Profesion Undang-Undang 1976 ('Akta'), seperti berikut: (i) satu deklarasi bahawa defendan telah dengan salahnya melantik Jawatankuasa Disiplin ('DC') bagi mendengar aduan terhadap plaintif tanpa terlebih dahulu melantik dan meneliti laporan Tribual Penyiasat ('IT'); (ii) satu deklarasi bahawa prosiding disiplin yang dijalankan oleh DC telah melanggar peruntukan Akta; (iii) satu deklarasi bahawa prosidng disiplin yang diambil terhadap plaintif setakat ini adalah batal dan tak sah; dan (iv) satu injunksi menghalang DC dari meneruskan prosiding disiplin

terhadap plaintif. Yang arif hakim Mahkamah Tinggi membenarkan permohonan plaintif sekaligus menyebabkan rayuan oleh defendan di sini. Defendan merujuk kepada s. 103A(a) dibaca dengan 103B Akta dan berhujah bahawa ia boleh, dalam keadaan-keadan tertentu, melantik DC tanpa perlu melalui mekanisma perlantikan IT. Defendan juga berhujah bahawa kenyataan penjelasan kepada s. 103A Bil Profesion Undang-Undang (Pindaan) 1992 ('Bil') menunjukkan bahawa s. 103A harus dibaca bersekali dengan s. 103B Akta, tetapi kedua-dua seksyen tersebut tidak perlu dipertimbang bersekali dengan seksyen-seksyen terdahulu di bawah Bahagian VII Akta dalam mencapai tafsiran sebenar kedua-dua seksyen tersebut. Isu tunggal yang berbangkit adalah sama ada, berdasarkan kepada peruntukan Akta dan bagi maksud menyiasat aduan dan membuat laporan mengenainya, defendan boleh terus menangani aduan yang dibuat terhadap plaintif dengan cara melantik DC tanpa perlu melantik IT terlebih dahulu.

Diputuskan (menolak rayuan)
Oleh Zulkefli Makinudin HMR:

(1) Peruntukan ss. 103A dan 103B pada Bahagian VII Akta hendaklah dipertimbang dalam konteks seksyen-seksyen terdahulu di bawah Bahagian VII yang sama Akta yang menyentuhi "Prosiding Disiplin". Ia tidak boleh dipertimbang secara terasing bagi mengelakkan prosedur dan mekanisma yang diperuntukkan oleh Akta bagi tujuan menangani aduan-aduan yang dibuat terhadap peguambela dan peguamcara. Melakukan demikian akan membawa kepada 'arbitrariness' yang mana ianya bertentangan dengan semangat Akta. Sama ada atau tidak suatu penyiasatan di bawah s. 103A(a) harus dilakukan akan bergantung kepada laporan yang dibuat oleh IT di bawah s. 102(2) Akta. Perkataan relevan yang digunakan oleh s. 100 Akta adalah bahawa DB "hendaklah dengan segera" menubuhkan sebuah IT jika DB beranggapan aduan mempunyai merit. Tiada suatu apapun di dalam s. 100 Akta yang menunjukkan bahawa DB boleh "dengan segera" melantik sebuah DC bagi menyiasat aduan dalam keadaan-keadaan tertentu seperti yang dikatakan oleh defendan. Jika badan perundangan berniat bahawa DB harus mempunyai kuasa untuk "dengan segera" melantik DC dan mengelak dari melantik IT, maka peruntukan yang jelas harus dibuat mengenainya; bagaimanapun, tiada peruntukan seperti itu dibuat. Tafsiran yang diketengahkan oleh defendan memerlukan

A mahkamah menambah perkataannya sendiri ke dalam Akta, yang mana ianya bertentangan dengan segala prinsip pentafsiran statut.

(2) Berhubung hujah defendan bahawa kenyataan penjelasan Bil B harus dianggap sebagai satu alat bantuan bagi mentafsir ss. 103 dan 103B Akta, ia tidak semestinya menunjukkan bahawa ia memberi defendan bidangkuasa berasingan untuk melantik DC tanpa melantik IT dalam keadaan-keadaan seperti yang dibentang oleh s. 103A(a) Akta. Begitu juga, ia boleh C ditafsir sebagai bermaksud bahawa, mengambilkira halkeadaan seperti yang dibentangkan oleh s. 103A(a) Akta, peruntukan-peruntukan berkaitan perlantikan dan fungsi sesebuah IT seperti yang disebut terdahulu dalam ss. 100 and 102 Akta hendaklah dipertimbangkan.

D **(3)** Yang arif hakim bicara betul bilamana menyebut bahawa defendan di sini, dalam memintasi IT dan melantik DC, telah dengan sewenangnya membuang salah satu dari syarat-syarat yang diletakkan Parlimen di dalam Akta bagi penyiasatan sesuatu aduan. Defendan tidak boleh berbuat demikian tanpa E menghiraukan peruntukan Akta yang terang lagi jelas. Yang arif hakim bicara juga betul apabila berkata bahawa, melihat kepada skim Akta, satu-satunya keadaan di mana DB boleh melantik DC tanpa merujuk kepada IT adalah apabila peguambela dan peguamcara berkenaan telah disabit dengan F pecah amanah jenayah atau kesalahan lain yang melibatkan fraud atau penipuan, atau di mana seorang peguambela dan peguamcara itu telah digantung amalannya di bawah s. 94(4) Akta. Dalam kes semasa, plaintif tidak pernah disabit dengan kesalahan jenayah dan tidak juga digantung amalannya. Oleh G itu, menjadi kewajipan defendan untuk mematuhi prosedur seperti yang dibentangkan oleh Akta dan tidak dengan sewenang-wenangnya memintas prosedur statutori yang diperuntukkan di dalam Akta.

H **Case(s) referred to:**

Attorney-General v. HRH Prince Ernest Augustus of Hanover [1957] 1 All ER 49 HL ***(refd)***

Wilson v. First Country Trust Ltd [2004] 1 AC 816 ***(refd)***

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Legislation referred to:
Legal Profession Act 1976, ss. 93, 94(4), 95, 96, 97, 100(1), 101, 102(2)(a), (b), 103A(a), 103B

For the appellant/defendant - N Chandran (Maidzuara Mohammed & Selena Chow with him); M/s Logan Sabapathy & Co
For the respondent/plaintiff - Alex De Silva; M/s De Silva

Reported by Suresh Nathan

JUDGMENT

Zulkefli Makinudin JCA:

Introduction

[1] By way of originating summons filed on 13 September 2005, the plaintiff who is an advocate and solicitor sought several declarations and relief against the defendant, a disciplinary board constituted under the provision of s. 93 of the Legal Profession Act 1976 ("the Act") *inter alia* as follows:

(i) A declaration that the defendant has wrongly appointed a Disciplinary Committee to hear a complaint against the plaintiff without first appointing and obtaining a report from an Investigating Tribunal;

(ii) A declaration that the disciplinary proceedings carried out by the Disciplinary Committee purportedly appointed by the defendant is in breach of the provisions of the Act.

(iii) A declaration that the disciplinary proceedings taken thus far against the plaintiff by the Disciplinary Committee appointed by the defendant is null and void; and

(iv) An injunction to stop all further disciplinary proceedings against the plaintiff by the Disciplinary Committee appointed by the defendant.

[2] The learned High Court Judge allowed the plaintiff's application and made the orders as prayed for by the plaintiff. The defendant now appeals against the whole decision of the learned trial Judge of the High Court.

A **Facts Of The Case**

[3] The relevant facts of the case giving rise to the plaintiff's action herein and the chronology of events may be summarized as follows:

B (1) On 22 December 2004, a complaint was lodged against the plaintiff by one Wan Haslan bin Wan Hassan on behalf of TH-NSTC Sdn Bhd to the defendant.

(2) On 8 February 2005, the defendant sent a notice to the C plaintiff, requesting the plaintiff's written explanation to the complaint within 14 days from the date of receipt of the said notice.

(3) On 8 March 2005, the plaintiff wrote to the defendant D requesting for an extension of thirty (30) days from the date of his letter to respond to the complaint.

(4) On 25 March 2005, the defendant responded by way of a letter urging the plaintiff to forward his explanation as soon as possible, failing which, the complaint shall be considered E by the defendant without the benefit of his explanation.

(5) Since the defendant did not receive any further letters whether by way of explanation or otherwise from the plaintiff, the defendant proceeded to consider the complaint F at its meeting held on 16 April 2005, and decided to refer it to a Disciplinary Committee pursuant to s. 103A(a) of the Act. The plaintiff was informed of this by the defendant by way of a letter dated 28 April 2005.

G (6) By a letter dated 20 June 2005, the plaintiff was informed by the Disciplinary Committee that a hearing date had been fixed for 12 July 2005 to hear the complaint.

(7) By a letter dated 6 July 2005, the plaintiff through his H solicitors Messrs De Silva, wrote to the Chairman of the Disciplinary Committee seeking clarifications as to why a Disciplinary Committee had been constituted to hear the complaint when no prior investigation had been conducted by any Investigating Tribunal pursuant to the Act. In the I same letter, the plaintiff's solicitor also sought for an adjournment of the hearing scheduled on 12 July 2005, giving the reason that the plaintiff would be overseas at that time.

(8) The Chairman of the Disciplinary Committee responded to the plaintiff's solicitors in a letter dated 6 July 2005, informing that the preliminary objection can only be heard at the hearing presided by the Disciplinary Committee itself. The plaintiff was further informed that a decision to adjourn the hearing could only be made collectively by the Disciplinary Committee itself.

(9) The hearing before the Disciplinary Committee on 12 July 2005 was adjourned to 27 July 2005. When the Disciplinary Committee sat on 27 July 2005 the plaintiff was absent. The plaintiff was not well and had seen a doctor who certified that he was unwell. Plaintiff's counsel then requested for an adjournment and tendered the medical certificate in support of the request at the hearing on 27 July 2005.

(10) The Disciplinary Committee rejected the plaintiff's request for an adjournment and proceeded with hearing the complaint. Evidence was recorded from one YM Raja Azahatuluyun binti Raja Jaafar on behalf of the complaint. Thereafter the Disciplinary Committee fixed 16 September 2005 to continue the hearing of the complaint. The hearing before the Disciplinary Committee was further adjourned in view of the said originating summons filed and heard before the trial judge.

Issue To Be Tried

[4] Before the learned trial judge and again before us in this appeal learned counsel for both the plaintiff and the defendant agreed that there is only one main issue to be tried in this matter namely:

> Whether the defendant can proceed with a complaint made against the plaintiff, by appointing a Disciplinary Committee without first appointing an Investigating Tribunal to inquire into the complaint and submit a report, pursuant to the provisions of the Act.

Contention Of The Parties

[5] It is not disputed that the defendant had not at any time constituted an Investigating Tribunal to inquire into the complaint and submit a report to the defendant for its consideration. It is therefore the contention of the plaintiff that the defendant in by-passing the Investigating Tribunal and appointing a Disciplinary

Committee has resulted in the defendant breaching the provisions of the Act and consequently rendered the proceedings commenced against the plaintiff to be void for procedural unfairness.

[6] On the other hand it is the contention of the defendant that the Disciplinary Board has the power to constitute a Disciplinary Committee without first constituting an Investigating Tribunal. The defendant relies on s. 103A(a) read together with 103B of the Act in support of its contention.

Decision Of The Court Of Appeal

[7] Learned counsel for the defendant submitted that in certain circumstances, the defendant may appoint a Disciplinary Committee without the need of going through the mechanism of appointing an Investigating Tribunal. He referred to s. 103A(a) read together with 103B of the Act. For easy reference the provisions of s. 103A and 103B of the Act are reproduced in full as follows:

> 103A. Where:
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> (a) the Disciplinary Board determines that there should be a formal investigation; or
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> (b) an advocate and solicitor has been convicted of an offence of criminal breach of trust under section 409 of the Penal Code or any other offence involving fraud or dishonesty; or
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> (c) the advocate and solicitor has been suspended under section 94(4) of this part;
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> the Disciplinary Board shall forthwith appoint a Disciplinary Committee which shall hear and investigate the matter.
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> 103B(1) The Disciplinary Board shall appoint a Disciplinary Committee to consider, in cases where an Investigating Tribunal has been appointed, the report of the Investigating Tribunal, or to investigate and make recommendations to the Disciplinary Board in respect of cases under section 103A.
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> (2) A Disciplinary Committee shall consist of (three) members of whom shall be:
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> (a) (two) advocates and solicitors; and
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> (b) (one) lay person,
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> appointed from the Disciplinary Committee Panel.

(3) The Disciplinary Board shall appoint a member from paragraph (a) of the subsection (2) to be the Chairman of the Disciplinary Committee.

[8] In his argument before us learned counsel for the defendant submitted that we should look into the objective behind the enacting of the Legal Profession (Amendment) Act 1992 (Act 812/92) by the legislature which brought about the new amended provisions s. 103A and 103B of the Act. It is the defendant's position that these amended provisions give the defendant separate jurisdiction to forthwith appoint a Disciplinary Committee in the circumstances as set out in s. 103A(a), (b) or (c) of the Act. For the defendant it was submitted that in cases where an interpretation of a particular amended statutory provision is required, the explanatory statement of the bill could be referred as an aid to statutory interpretation. (See the case of *Wilson v. First Country Trust Ltd.* [2004] 1 AC 816). In this regard from a reading of the explanatory statement to s. 103A of the Legal Profession (Amendment) Bill 1992 dated 19 December 1991, the following is noted:

Section 103A provides for the situation where the Disciplinary Board determines that a formal investigation has to be made in respect of the complaint against the advocate and solicitor. In such a case a Disciplinary Committee shall be appointed under section 103B.

Learned counsel for the defendant contended that a reading of the explanatory statement to s. 103A of the Legal Profession (Amendment) Bill shows that s. 103A of the Act is to be read together with s. 103B of the Act. It was submitted for the defendant that ss. 103A and 103B of the Act need not be considered together with the preceding sections under Part VII of the Act in arriving at the proper interpretation of the said two sections.

[9] It was further submitted for the defendant that s. 102(2)(a) and (b) of the Act already provides for instances where the Disciplinary Board may constitute a Disciplinary Committee, either upon the recommendation of the Investigating Tribunal or if the Investigating Tribunal finds that a formal investigation is not necessary, the Disciplinary Board may disagree and appoint a Disciplinary Committee to investigate. The defendant contended that the first limb of s. 103B(1) of the Act clearly caters for

A instances arising under s. 102(2)(a) and (b) of the Act and that the second limb of s. 103B(1) of the Act must cater for a different scenario which is that the Disciplinary Board is separately empowered to forthwith appoint a Disciplinary Committee in situations stated in s. 103A(a), (b) or (c) of the Act. Otherwise, B the defendant contended this would result in duplicity in the interpretation of s. 102(2)(a) and (b) of the Act of the one part, and s. 103A read with s. 103B of the Act of the other part.

[10] With respect, I do not think all the arguments put forward C for the defendant's case are tenable in the circumstances of this case. I am of the view the provisions of ss. 103A and 103B in Part VII of the Act must be considered in the light of the preceding sections under the same Part VII of the Act relating to "Disciplinary Proceedings". It cannot be considered in isolation to D circumvent the procedure and mechanism provided by the Act in dealing with complaints against advocates and solicitors. To do so will lead to arbitrariness which will be contrary to the spirit of the Act.

E **[11]** Looking at the scheme of the Act, disciplinary proceedings against an advocate and solicitor is governed by Part VII under the heading "Disciplinary Proceedings". Section 93 provides for the establishment of the Disciplinary Board and its corporation. Sections 95, 96 and 97 provide the procedure for the appointment of a Disciplinary Committee and an Investigating Tribunal. Section F 99 provides how a complaint is to be made to the Disciplinary Board. Section 100(1) provides the mechanism for investigating a complaint which expressly provides as follows:

> (1) Where a written application or complaint is referred to the G Disciplinary Board, the Disciplinary Board shall, (if it considers that there is merit in the application or complaint), forthwith constitute an Investigating Tribunal.

Clearly from the above, the only discretion vested with Disciplinary Board at this stage is to decide whether there is merit or not in H the complaint. If it considers that there is merit in the complaint, then it shall forthwith constitute an Investigating Tribunal.

[12] Section 101 of the Act provides the manner in which an Investigating Tribunal may investigate the complaint. Section 102 I then contain provisions relating to the finding of the Investigating Tribunal and of the recommendations that the Investigating Tribunal may make in its report to the Disciplinary Board. The

section provides that an Investigating Tribunal may recommend that a formal investigation is required or that it is not required. In the event the Investigating Tribunal recommends a formal investigation, then the Disciplinary Board shall constitute a Disciplinary Committee. Even where the Investigating Tribunal recommends that a formal investigation is not necessary, the Disciplinary Board may disagree and still appoint a Disciplinary Committee.

[13] It can be seen that, only when the Disciplinary Board has received a report from an Investigating Tribunal and the Disciplinary Board determines there ought to be a formal investigation that a Disciplinary Committee is appointed to investigate the complaint. The prerequisite is that there must be a report from the Investigating Tribunal first and a decision by the Disciplinary Board that a formal investigation is required.

[14] It is my view that the defendant's contention calls for a strained interpretation of the provisions of s. 103A and s. 103B of the Act as such a contention does not take into account the provisions of the preceding ss. 100, 102 and 103 of the Act. It is to be noted that s. 103A(a) of the Act provides as follows:

> Where the Disciplinary Board determines that there should be **a formal investigation**, the Disciplinary Board shall forthwith appoint a Disciplinary Committee which shall hear and investigate the matter. (emphasis added)

The phrase "a formal investigation" found in the said s. 103A(a) has appeared earlier in ss. 102 and 103 of the Act. If the defendant's contention is to be accepted, then one has to ignore this fact. It is my view whether there should be a formal investigation or not as envisaged by s. 103A(a) of the Act it must be subject to a report made by the Investigating Tribunal under s. 102(2) of the Act. The fundamental principles of statutory interpretation is that a statute is to be read and interpreted as a whole and not in isolation. Sections 103A and 103B of the Act therefore cannot be read in isolation without considering the other preceding ss. 102 and 103 in the same Part VII of the Act. On this point I would like to refer to the case of *Attorney-General v. H.R.H. Prince Ernest Augustus of Hanover* [1957] 1 All ER 49 HL. wherein Viscount Simonds in delivering his speech *inter alia* at p. 55 had this to say:

A It means only that the elementary rule must be observed that no one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so, he is not entitled to say that it, or any part of it, is clear and unambiguous.

B **[15]** It is also my finding that if the interpretation by the defendant on ss. 103A and 103B is to be accepted, then it would render s. 100 of the Act meaningless. The relevant words used in s. 100 of the Act are that the Disciplinary Board "shall forthwith" constitute an Investigating Tribunal if the Disciplinary Board C considers a complaint has merit. There is nothing in s. 100 of the Act to even suggest that the Disciplinary Board can "forthwith" appoint a Disciplinary Committee to investigate a complaint in certain circumstances as contended by the defendant. If the legislature intended the Disciplinary Board to have the powers to D "forthwith" appoint a Disciplinary Committee and by-pass the appointment of an Investigating Tribunal, then there would have been an express provision to this effect. The provisions would presumably also set out the criteria, nature and type of complaints in detail that would enable the Disciplinary Board to by-pass the E Investigating Tribunal and go straight to a Disciplinary Committee. However, there is no such provision. The construction that the defendant is propounding requires the court to insert words into the Act for the said construction to apply. To my mind this would go clearly against all principles of statutory interpretation.

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[16] With regard to the defendant's contention that the explanatory statement of the Legal Profession (Amendment) Bill 1992 be referred to as an aid to statutory interpretation of s. 103A and 103B of the Act, it is my finding that it does not necessarily G show that it gives the defendant a separate jurisdiction to appoint a Disciplinary Committee without appointing an Investigating Tribunal in certain circumstances as set out in s. 103A(a) of the Act. Equally, it can also be interpreted to mean that in the circumstances as set out in s. 103A(a) of the Act the H provisions in respect of the appointment and function of an Investigating Tribunal mentioned in the earlier preceding ss. 100 and 102 of the Act would have to be considered in its application.

[17] I am in agreement with the view and finding of the learned I trial judge when he stated that by the defendant herein by-passing the Investigating Tribunal and appointing a Disciplinary Committee, the defendant has unilaterally removed one of the tiers

provided for by Parliament in the Act for investigating a complaint. In my view the defendant cannot unilaterally do this and ignore the clear and express provisions of the Act.

[18] The learned trial judge was also right when he stated that looking at the scheme of the Act, the only time when the Disciplinary Board may constitute a Disciplinary Committee without constituting an Investigating Tribunal is when an advocate and solicitor has been convicted of an offence of criminal breach of trust or any other offence involving fraud or dishonesty or the advocate and solicitor has been suspended under s. 94(4) of the Act. In the present case the plaintiff has not been convicted of any criminal case nor has been suspended. Hence, it is incumbent upon the defendant to follow the procedures as laid down by the Act and not to unilaterally circumvent the statutory procedure provided for in the Act.

Conclusion

[19] For the reasons above stated, I would dismiss the defendant's appeal with costs and order that the deposit be paid to the plaintiff on account of taxed costs.

[20] My learned brothers, Mokhtar bin Hj. Sidin and Hashim bin Dato' Yusoff, JJCA, have seen this judgment in draft and they have expressed their agreement with it.